

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BORNSTEIN SEAFOODS, INC.,

CASE NO. C21-0022JLR

Plaintiff,

ORDER DENYING MOTION
FOR RECONSIDERATION

CITY OF BELLINGHAM, et al.,

Defendants.

Before the court is Defendant the Port of Bellingham’s (“Port”) motion for reconsideration of the court’s June 14, 2021 order denying the Port’s motion to dismiss or Plaintiff Bornstein Seafoods, Inc.’s (“Bornstein”) claims against it. (MFR (Dkt. 6/14/21 Order (Dkt. # 36).) Motions for reconsideration are disfavored, and the ordinarily will deny such motions unless the moving party shows (a) manifest error in the prior ruling, or (b) new facts or legal authority that could not have been brought to the attention of the court earlier through reasonable diligence. Local Rules W.D. Wash. 7(h)(1).

1 The court has carefully reviewed the Port’s motion. The Port presents no new
2 facts or legal authority that could not have been brought to the court’s attention earlier
3 with reasonable diligence. (*See generally* MFR.) Instead, the Port argues that the court
4 erroneously interpreted its motion to dismiss (MTD (Dkt. # 18)) as a request to dismiss or
5 stay this entire lawsuit pursuant to *Colorado River Water Conservation District v. United*
6 *States*, 424 U.S. 800, 813 (1976). (*See* MFR at 3.) The Port again urges the court to
7 dismiss or stay only Bornstein’s claims against it. (*See generally id.*)

8 Contrary to the Port’s assertion, the court understood the Port’s motion to dismiss
9 as requesting only dismissal or stay of Bornstein’s claims against the Port, rather than
10 dismissal or stay of the entire lawsuit. As the court explained in its June 14, 2021 order,
11 however, the court interprets the Ninth Circuit Court of Appeals’s recent decision in
12 *United States v. State Water Resources Control Board*, 988 F.3d 1194 (9th Cir. 2021), as
13 prohibiting a partial *Colorado River* stay. (*See* 6/14/21 Order at 7-8.) In that case, the
14 Ninth Circuit made clear that a partial *Colorado River* stay is “inappropriate when the
15 state court proceedings will not resolve the *entire case before the federal court.*” *State*
16 *Water Res. Control Bd.*, 988 F.3d at 1204 (emphasis added). Rather, ““a district court
17 may enter a *Colorado River* stay order only if it has “full confidence” that the parallel
18 state proceeding will *end the litigation.*”” *Id.* (quoting *Intel Corp. v. Advanced Micro*
19 *Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993)) (emphasis in original). Here, the court
20 applied *State Water Resource Control Board* and concluded that dismissal of the Port’s
21 claims or a partial stay of the Port’s claims would be inappropriate because the state-court
22 proceedings will not resolve the entire litigation, which also includes Bornstein’s claims

1 against Defendant the City of Bellingham (“City”) and the City’s counterclaims against
2 Bornstein. (See Am. Compl. (Dkt. # 7); City Ans. (Dkt. # 22).) As a result, “exceptional
3 circumstances” that would “justify [the court’s] surrender of [its] jurisdiction” pursuant to
4 *Colorado River* are not present in this matter. *See State Water Res. Control Bd.*, 988 F.3d
5 at 1203 (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25
6 (1983)) (internal quotation marks omitted).

7 For the foregoing reasons, the court concludes that the Port has made neither of
8 the required Local Rule LCR 7(h)(1) showings. (See generally MFR.) Therefore, the
9 court DENIES the Port’s motion for reconsideration (Dkt. # 37).

10 Dated this 24th day of June, 2021.

11
12 
13 JAMES L. ROBART
14 United States District Judge
15
16
17
18
19
20
21
22